Supreme Court, U.S.
FILED
SEP. 15 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-2064

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

DELTA AIR LINES, INC.,

Petitioner,

v.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, DONALD R. HAZELTINE AND EARL E. MEECH,

Respondents.

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Of Counsel:
WALTER F. BRILL
GREGORY L. RIGGS
DELTA AIR LINES, INC.
1030 Delta Boulevard
Atlanta, Georgia 30320
(404) 765-2600

*WILLIAM J. KILBERG
BARUCH A. FELLNER
JANET M. COOK
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

Attorneys for Petitioner, Delta Air Lines, Inc.

**Counsel of Record*

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

TABLE OF AUTHORITIES

CASES:	Page
AT&T Technologies, Inc. v. Communication Workers of America, 475 U.S. 643 (1986)	7
Bonin v. American Airlines, Inc., 621 F.2d 635 (5th Cir. 1980), *cert. denied*, 471 U.S. 1005 (1985)	5,6
Brotherhood of Railroad Trainmen v. Denver and Rio Grande Western Railroad Co., 338 F.2d 407 (10th Cir. 1964), *cert. denied*, 380 U.S. 972 (1965)	2
Chicago and Northwestern Transportation Co. v. United Transportation Union, 656 F.2d 274 (7th Cir. 1981)	3
Firestone Tire & Rubber Co. v. Bruch, ___ U.S. ___, 109 S. Ct. 948 (1989)	6
Miller v. Chicago and Northwestern Transportation Co., 647 F. Supp. 1432 (N.D. Ill. 1986)	2
Wilson v. Chicago Northwestern Transportation Company, 728 F.2d 963 (7th Cir. 1984)	2
Zelder v. Delta Air Lines, Inc., 423 So. 2d 945 (Fla. App. 1982)	4
STATUTES:	
29 U.S.C. § 1132(d)(1)	4
45 U.S.C. § 152 (Seventh)	2
45 U.S.C. § 153	2
45 U.S.C. § 153 (First) (q)	4
45 U.S.C. § 156	2

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

1. The Air Line Pilots Association's ("ALPA's") Opposition To Delta's Petition For Certiorari ("Op. Cert.") underscores the far-reaching impact of this case. ALPA's request for relief, granted by the court of appeals, is bottomed on the putative right of an arbitrator to ignore and even amend the terms of an ERISA employee benefit plan. Thus, ALPA recognizes that Hazeltine could recover disability benefits only if the System Board "eased" the eligibility requirements under the Plan. Op. Cert. at 8. This asserted power of the System Board to "ease" plan terms must be reviewed by this Court. Such a holding is contrary to well-established law that *plan terms*, and not arbitrator decisions which "ease" those terms, govern the disposition of plan benefits. *See, e.g.*, Delta's Petition for Certiorari ("Pet.") at n.17.[1]

2. ALPA argues that the court below determined that the System Board not only could act in derogation of plan terms but also could modify the collec-

[1] ALPA relies on the assumption of the court below that the fiduciary breaches of the System Board in *granting* claims in violation of Plan terms can be rectified through litigation under section 502 of ERISA, 29 U.S.C. § 1132 (1982). App. A at 18. It is unclear which "participant, beneficiary, or fiduciary" is to bring such an independent challenge to improper System Board conduct, particularly since Delta, which under the RLA is the party responsible for arbitrating disputes before the System Board, is not a "participant, beneficiary, or fiduciary" under the Plan. *See* paragraph 4 *infra*. Moreover, there would appear to be no jurisdictional basis for such an action in view of the exceptionally narrow grounds for review of System Board awards under the Railway Labor Act ("RLA"). App. A at 2.

tive bargaining agreement ("CBA"). "The Court of Appeals concluded that the System Board's resolution of Hazeltine's grievance, . . . constituted a modification of the CBA through the collective bargaining process." Op. Cert. at 7. It is axiomatic, however, that a System Board is limited to interpretation of the CBA as it finds it; it may not alter the collectively bargained terms which govern its decision. The RLA expressly limits the power of the System Board to resolving "minor" disputes involving the interpretation and application of a collective bargaining agreement. 45 U.S.C. § 153.[2] Collective bargaining agreements may only be altered or amended through the collective bargaining process. 45 U.S.C. § 152 (Seventh) and § 156.[3] Section 6 of the RLA, 45 U.S.C § 156, establishes specified procedures to alter or amend collective bargaining agreements. The System Board has no role in this process.[4] The System Board

---

[2] *See, e.g., Brotherhood of Railroad Trainmen v. Denver and Rio Grande Western Railroad Co.*, 338 F.2d 407 (10th Cir. 1964), *cert. denied*, 380 U.S. 972 (1965) (System Board has no authority to award punitive or liquidated damages when such authority is not granted to it by the collective bargaining agreement).

[3] *See Wilson v. Chicago Northwestern Transportation Company*, 728 F.2d 963 (7th Cir. 1984) (System Board decision overturned on basis that it altered the existing agreement by ignoring its clear language which required compliance with specific time limits; agreement may only be altered through the collective bargaining process); *Miller v. Chicago and Northwestern Transportation Co.*, 647 F. Supp. 1432 (N.D. Ill. 1986) (System Board decision overturned because the Board completely ignored an unambiguous contract provision providing the agreed-upon remedy and instead fashioned its own form of relief; collective bargaining agreement may only be amended by the parties through collective bargaining).

[4] Disputes over the formation or alteration of collective bar-

is simply not empowered to engage in collective bargaining on behalf of ALPA and Delta. The reasoning of the court of appeals, invoked by ALPA in its Op. Cert. at 7, would allow a neutral arbitrator to add a new term to the CBA, to which ALPA and Delta would both be bound despite the absence of collective bargaining. It is respectfully submitted that such an extreme result must be reversed by this Court.

3. ALPA further argues that through the simple expedient of referring to Hazeltine's eligibility for disability benefits in its decision, the System Board brought within its jurisdiction the power to decide questions regarding eligibility for disability benefits, at least for Hazeltine. App. A at 12-13. Thus, even if the System Board did not have jurisdiction to decide questions regarding eligibility for disability benefits for all pilots, it could expand its jurisdiction to decide such questions with regard to Hazeltine. It is respectfully submitted that jurisdictional limitations are not so malleable that they may be molded to the contours of an arbitrator's decision.[5] It is elementary

---

gaining agreements are characterized as "major" disputes under the RLA and are outside the jurisdiction of the System Board which has jurisdiction only to resolve "minor" disputes. *See, e.g., Chicago and Northwestern Transportation Co. v. United Transportation Union*, 656 F.2d 274 (7th Cir. 1981) (major disputes arise from the bargaining process for a new or altered contract while minor disputes do not involve an attempt to change the agreement terms but instead involve the interpretation of an existing agreement; a System Board only has jurisdiction over minor disputes).

[5] This holding is fashioned as an independent and alternative holding: "Even if no other disputes over eligibility for Plan benefits were subject to arbitration, we think it clear that the facts of Hazeltine's grievance require the System Board to en-

that when a System Board exceeds the jurisdictional parameters established by the CBA, it violates the provisions of the RLA. 45 U.S.C. § 153 (First) (q).

4. ALPA can make the arguments discussed above only by mischaracterizing the identity of the parties. Indeed, that is precisely what ALPA and the D.C. Circuit have done by characterizing the disputants over disability benefits as Delta and the grievants. *See* Op. Cert. at 1. Rather, it is the Plan that denied the benefits at issue in this lawsuit, not Delta. The Plan is a legal entity entirely separate from Delta. As such, the Plan may sue and be sued. 29 U.S.C. § 1132(d)(1).[6] Plan benefits are paid through a trust funded by Delta through actuarially determined contributions. J.A. 137-138. The Plan's assets, however, belong to the Plan, and not to Delta or ALPA, and it is the Plan that pays all benefits due. Throughout this lawsuit, ALPA has endeavored to blur this distinction between the Company and the Plan.[7] Moreover, this blurring of juridical entities is not a simple accident of drafting. ALPA's contentions ignore the

---

tertain his claim." App. A at 12. The very premise of the decision is that even if the System Board does not have the jurisdiction to decide questions regarding eligibility for disability benefits for all Delta pilots, it does for Hazeltine because of the way it fashioned its opinion regarding his discharge. But if the System Board does not have jurisdiction to decide questions regarding eligibility for disability benefits, and if it has done so for Hazeltine (which Delta disputes), the decision is *ultra vires*.

[6] Whenever both Delta and the Plan have been sued over a denial of Plan benefits, Delta has been dismissed from the suit as an improper party. *See, e.g., Zelder v. Delta Air Lines, Inc.*, 423 So. 2d 945 (Fla. App. 1982).

[7] *See, e.g.*, Op. Cert. at 1.

fundamental and indisputable fact that the parties have established a separate legal entity—the Disability Plan and its Trust—to fund and distribute disability benefits to eligible participants. Therefore, contrary to ALPA's positions in paragraphs 1-3 above, the Company, through the System Board, has no authority to grant disability benefits.

5. ALPA seeks to persuade this Court that there is no inter-circuit conflict between the decision below and the persuasive Fifth Circuit precedent, *Bonin v. American Airlines, Inc.*, 621 F.2d 635 (5th Cir. 1980), *cert. denied*, 471 U.S. 1005 (1985). Contrary to the decision below, the court in *Bonin* determined that plan terms define the procedures for resolving plan disputes. Because the plan in *Bonin* did not provide for arbitral machinery, the Fifth Circuit concluded that the court, and not the System Board, had jurisdiction over Bonin's pension claim under ERISA.

In attempting to distinguish *Bonin* from this case, ALPA principally relies on the fact that "[t]he plan in that case 'significantly' provided that ' "neither the interpretation of the Plan nor its administration shall as such be within the jurisdiction" of the collective bargaining agreement,' *Bonin*, 621 F.2d at 639." Op. Cert. at 10. ALPA would distinguish *Bonin* by emphasizing that the *Bonin* plan's terms were phrased in the *negative*. In this case, Delta's Plan *affirmatively* provides for "exclusive," "final" and "conclusive" administration and operation of the Plan by the Plan's Administrative Committee. J.A. 82-83. The vesting of exclusive jurisdiction in the Plan to resolve Plan disputes could not have been stated more clearly. Moreover, those exclusive Plan procedures were incorporated into the CBA, thereby binding ALPA to

that exclusive Plan machinery. Thus, the square conflict between *Bonin* and the decision below cannot be reconciled by distinguishing between prescriptive and proscriptive plan terms. The teaching of *Bonin* is clear—plan terms are paramount. Whether those terms prescribe exclusive Plan machinery or proscribe extra-plan procedures does not constitute a principled distinction between *Bonin* and the case at bar.

6. ALPA mistakenly argues that Delta reads ERISA to prohibit the parties to a CBA from adopting a multi-tiered benefit claim procedure—administrative review as well as arbitral mechanisms. ALPA distorts Delta's position. Delta argues no more than the primacy of Plan terms. *See Firestone Tire & Rubber Co. v. Bruch*, ___ U.S. ___, 109 S. Ct. 948 (1989). It is undisputed that those terms provide for the exclusive resolution of benefit claims under Plan procedures, and not for duplicative and cumbersome multiple levels of review. If Delta and ALPA had wished to adopt both of the claims review procedures authorized by ERISA, they could have done so under the explicit terms of the Plan.[8] Here, those express terms, to the contrary, vest the final and exclusive authority to interpret the Plan and resolve disputes over benefits, with the Plan's Administrative Committee. Neither ALPA nor the court below has suggested how ALPA's position can be accepted without wholly ignoring those plan provisions. It is incumbent upon this Court to vindicate the primacy of Plan terms rendered meaningless by the court below.

---

[8] Delta is not aware, however, of any instance where such duplicative multi-tiered procedures have been adopted.

7. Finally, ALPA has failed to come to grips with the court's misapplication of *AT&T Technologies, Inc. v. Communication Workers of America*, 475 U.S. 643 (1986). ALPA argues that contract interpretation is an issue for the System Board and not the court. Op. Cert. at 11. Under *AT&T*, however, contract interpretation is for the court, and not the System Board, when such interpretation is necessary to resolve a dispute over arbitrability. *AT&T* at 651.

CONCLUSION

The court of appeals has radically shifted labor, ERISA and RLA law to bestow unlimited power upon a System Board to add terms to collective bargaining agreements and ignore terms in ERISA plans. Such far-reaching precedent must be overturned.

September 15, 1989

Respectfully submitted,

Of Counsel:
WALTER A. BRILL
GREGORY L. RIGGS
DELTA AIR LINES, INC.
1030 Delta Boulevard
Atlanta, Georgia 30320
(404) 765-2600

WILLIAM J. KILBERG
BARUCH A. FELLNER
JANET M. COOK
GIBSON, DUNN & CRUTCHER
1050 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036
(202) 955-8500

Attorneys for Petitioner,
Delta Air Lines, Inc.